

Assembly Bill No. 856

CHAPTER 257

An act to amend Sections 14528, 14532, 14533, 14557, 14558, 14591, 14601, 14611, 14623, 14631, 14641, 14642, 14651, 14652, 14655, 14681, and 14682 of, to add Sections 14550.5, 14583.5, 14651.5, and 14661 to, and to repeal Section 14632 of, the Food and Agricultural Code, relating to fertilizer, and making an appropriation therefor.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 856, Caballero. Fertilizing material: organic input material.

Existing law generally regulates fertilizing materials, as defined, and provides for the licensure of individuals who manufacture or distribute fertilizing materials.

This bill would include organic input material, as defined, within the definition of fertilizing material.

Existing law provides that there is in the Department of Food and Agriculture a Fertilizer Inspection Advisory Board consisting of 9 persons appointed by the Secretary of Food and Agriculture and composed as specified and with specified functions.

This bill would require the secretary, by January 1, 2012, and in consultation with the board, to review certain issues relating to organic input materials and to post the review in a report on the department's Internet Web site.

Existing law requires every person who manufactures or distributes fertilizing materials, before engaging in that activity, to obtain a license from the secretary for each plant and business location that he or she operates. Existing law requires a license fee not to exceed \$200, and authorizes the secretary to reduce the license fee, as provided.

This bill would require the secretary, prior to issuing a license, to require verification that the applicant is a manufacturer or distributor of fertilizing material. The bill would increase the license fee to an amount not to exceed \$300.

By increasing the amount of fee revenue to be deposited into a continuously appropriated fund, the Department of Food and Agriculture Fund, from certain license applicants, this bill would make an appropriation.

Existing law requires the registration of each differing label, other than weight or package size, for specialty fertilizer and certain other substances. Existing law requires the registration fee not to exceed \$200 per product.

This bill would also require registration of each differing label for organic input material, would require the registration fee for organic input material

not to exceed \$500 per product, and would require the funds generated from the registration of organic input materials to be deposited into the Organic Input Materials Account, which the bill would create in the Department of Food and Agriculture Fund, and be available only upon appropriation by the Legislature. The bill would provide that registrations may not be issued without a current license. The bill would require the inspection of organic input material manufacturers at least once per year, as provided.

Because a violation of provisions relating to fertilizing materials is a misdemeanor, by changing the definition of a crime this bill would impose a state-mandated local program.

Existing law requires a tonnage report to be submitted to the secretary semiannually, as provided, and requires the secretary to impose a penalty of \$200 on any person who fails to submit a report on or before the due dates.

This bill would provide that any tonnage report that is more than 90 days past due is a cause for revocation of the license.

Existing law requires every lot, parcel, or package of fertilizing material to have attached to it, or the shipment to be physically accompanied by, a label as required by the secretary, and makes a violation of these provisions an infraction or misdemeanor, as provided. Existing law authorizes the secretary to require proof of labeling statements and claims made for any fertilizing material and to cancel the approval of, or refuse to approve, a fertilizing material label if the secretary determines that adequate proof of label claims does not exist.

This bill would delete the specific penalty for a violation of the labeling provisions. The bill would instead require the secretary to cancel the approval of, or refuse to approve, a fertilizing material label if adequate proof of label claims does not exist. By changing the penalty for a crime, this bill would impose a state-mandated local program.

Existing law provides that the secretary shall have free access at reasonable times to records, premises, or conveyances used in the manufacture, transportation, importation, distribution, storage, or application of any fertilizing material.

This bill would also provide that the secretary has access to production processes used for those purposes.

Existing law provides that the secretary shall, at the times and to the extent necessary for the enforcement of these provisions relating to fertilizing material, among other things, take samples of, or make analyses or examinations of, any substance.

This bill would also permit the secretary to inspect the fertilizing material manufacturing facilities and take samples at various stages of production for specified purposes.

Existing law makes a violation of provisions relating to fertilizing materials a misdemeanor punishable by a fine of not more than \$500 for the first violation and not less than \$500 for each subsequent violation.

This bill would increase those fine amounts to not more than \$1,000 for the first violation and not less than \$1,000 for each subsequent violation.

This bill would require the Department of Food and Agriculture to levy a civil penalty against any person who violates the provisions relating to fertilizing materials, as provided.

This bill would provide that the department shall be entitled to receive reimbursement from any violator for any reasonable attorney's fees and other related costs in enforcement of these provisions relating to fertilizing materials.

By authorizing a new source of revenue to be deposited into a continuously appropriated fund, the Department of Food and Agriculture Fund, this bill would make an appropriation.

Existing law provides that it is unlawful for any person to manufacture or distribute in this state any fertilizing material without complying with the provisions relating to fertilizing materials or its regulations.

This bill would provide that it is unlawful for any person to adulterate, misbrand, or alter any fertilizing material with the result that the fertilizing material would be inconsistent with the label claims, and would make the violation of this provision a misdemeanor punishable by specified fines. By creating a new crime, this bill would impose a state-mandated local program. The bill would also authorize the secretary to prohibit a person who violates this provision or a certain other provision relating to the distribution of adulterated fertilizing material from obtaining a license to sell organic input materials for 3 years.

Existing law provides that the movement, distribution, or sale of all or part of any product that has been quarantined by the secretary, unless the movement, distribution, or sale has the prior approval of the secretary, is a misdemeanor punishable by a fine of not more than \$500 and a fine of not less than \$1,000 for a 2nd or subsequent violation.

This bill would also make a violation of that provision subject to a civil penalty and would increase those misdemeanor fine amounts to not more than \$5,000 for the first violation and not less than \$10,000 for a 2nd or subsequent violation.

Existing law prohibits a person from distributing an adulterated fertilizing material and provides specified conditions under which a fertilizing material will be deemed to be adulterated.

This bill would include as another condition if an organic input material contains ingredients that, in type or amount, do not comply with certain federal standards requirements.

Because a violation of provisions relating to fertilizing materials is a misdemeanor, by changing the definition of a crime this bill would impose a state-mandated local program.

This bill would also make conforming, clarifying, and technical changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 14528 of the Food and Agricultural Code is amended to read:

14528. “Discontinued manufacturing” means an auxiliary soil and plant substance, packaged agricultural mineral, packaged soil amendment, organic input material, and specialty fertilizer that is no longer manufactured, but is still offered for sale.

SEC. 2. Section 14532 of the Food and Agricultural Code is amended to read:

14532. “Farm use” means that the fertilizing material is used primarily for application to crops produced for commercial value.

SEC. 3. Section 14533 of the Food and Agricultural Code is amended to read:

14533. “Fertilizing material” means any commercial fertilizer, agricultural mineral, auxiliary soil and plant substance, organic input material, or packaged soil amendment.

SEC. 4. Section 14550.5 is added to the Food and Agricultural Code, to read:

14550.5. “Organic input material” means any bulk or packaged commercial fertilizer, agricultural mineral, auxiliary soil and plant substance, specialty fertilizer, or soil amendment, excluding pesticides, that is to be used in organic crop and food production and that complies with the requirements of the National Organic Program standards, as specified in Part 205 (commencing with Section 205.1) of Subchapter M of Chapter I of Subtitle B of Title 7 of the Code of Federal Regulations.

SEC. 5. Section 14557 of the Food and Agricultural Code is amended to read:

14557. “Provisional registration” means that under certain circumstances, a label for renewal on an auxiliary soil and plant substance, packaged agricultural mineral, packaged soil amendment, organic input material, or specialty fertilizer, alone or in any combination, may be registered for a limited period of time while labels are being corrected and reprinted.

SEC. 6. Section 14558 of the Food and Agricultural Code is amended to read:

14558. “Registrant” means any person who has registered a packaged agricultural mineral, auxiliary soil and plant substance, packaged soil amendment, organic input material, or specialty fertilizer.

SEC. 7. Section 14583.5 is added to the Food and Agricultural Code, to read:

14583.5. (a) The secretary, by January 1, 2012, and in consultation with the board, shall review the definition of organic input materials in Section 14550.5 and identify oversight and implementation issues that may arise or have arisen on account of that definition. The review shall also include an examination of materials not currently regulated under this definition that may warrant oversight by the department so as to protect the state’s

agricultural industry, including the organic industry, and recommendations for any necessary statutory changes.

(b) The secretary shall post the review required pursuant to subdivision (a) in a report on the Internet Web site of the department.

SEC. 8. Section 14591 of the Food and Agricultural Code is amended to read:

14591. (a) Every person who manufactures or distributes fertilizing materials shall, before he or she engages in the activity, obtain a license from the secretary for each plant and business location that he or she operates. Prior to issuing a license, the secretary shall require verification that the applicant is a manufacturer or distributor of fertilizing material compliant with this chapter. All licenses shall be renewed in January of each odd-numbered year, and shall be valid until December 31 of the following even-numbered year, if issued in January of that same year. However, a person who only distributes or who makes retail sales of packaged agricultural minerals, packaged commercial fertilizers, packaged soil amendments, organic input material, or packaged auxiliary soil and plant substances, alone or in any combination, which bear the registered label of another licensed person, is not required to obtain the license.

(b) Every person who manufactures or distributes, or intends to manufacture or distribute, ammonium nitrate as defined in Section 14512.5, in this state, shall inform the secretary of that activity or intent when applying for a license. The license obtained by that person shall identify him or her as a manufacturer or distributor of ammonium nitrate.

(c) The license fee shall not exceed three hundred dollars (\$300). The secretary may, based on the findings and recommendations of the board, reduce the license fee to a lower rate that provides sufficient revenue to carry out this chapter.

SEC. 9. Section 14601 of the Food and Agricultural Code is amended to read:

14601. (a) Each differing label, other than weight or package size, such as changes in the guaranteed analysis, derivation statement, or anything that implies a different product, for specialty fertilizer, packaged agricultural mineral, auxiliary soil and plant substance, organic input material, and packaged soil amendment shall be registered. All registrations shall be renewed in January of an even-numbered year, and shall be valid until December 31 of the following odd-numbered year, if issued in January of that same year. The registration fee shall not exceed two hundred dollars (\$200) per product, except for organic input material.

(b) Notwithstanding subdivision (a), the registration fee for organic input material shall not exceed five hundred dollars (\$500) per product, as the registration of organic input material labels require additional departmental resources and review time to ensure that nutrient guarantees and claims are scientifically feasible and meet National Organic Program standards. Funds generated from the registration of organic input material shall be deposited into the Organic Input Materials Account in the Department of Food and

Agriculture Fund and, notwithstanding Section 221, shall be available upon appropriation by the Legislature.

(c) The secretary may, based on the findings and recommendations of the board, reduce the registration fees to a lower rate that provides sufficient revenue to carry out this chapter.

(d) Registrations may not be issued without a current license.

(e) The secretary may require proof of labeling statements and other claims made for any specialty fertilizer, agricultural mineral, packaged soil amendment, organic input material, or auxiliary soil and plant substance, before the secretary registers any such product. As evidence of proof, the secretary may rely on experimental data, evaluations, or advice furnished by scientists, including scientists affiliated with the University of California, and may accept or reject additional sources of proof in the evaluation of any fertilizing material. In all cases, experimental proof shall relate to conditions in California under which the product is intended for use.

(f) Organic input material manufacturers shall be inspected at least once per year. The secretary may perform site inspections of organic input material manufacturing processes used to validate label nutrient guarantees, claims, and compliance with National Organic Program standards during the registration process. The secretary may accept inspections performed by a third-party organization recognized by the National Organic Program for out-of-state organic input material manufacturers. All inspection records obtained by the third-party organization shall be made available to the secretary upon request. When a third-party organization is conducting a site inspection, the organization shall notify the department of when the inspection is going to take place no less than 72 hours in advance of the inspection. Department representatives may be present at the inspection.

(g) (1) The secretary, after hearing, may cancel the registration of, or refuse to register, any specialty fertilizer, packaged agricultural mineral, packaged soil amendment, organic input material, or auxiliary soil and plant substance, which the secretary determines is detrimental or injurious to plants, animals, public safety, or the environment when it is applied as directed, which is known to be of little or no value for the purpose for which it is intended, or for which any false or misleading claim is made or implied. The secretary may cancel the registration of any product of any person who violates this chapter.

(2) The proceedings to determine whether to cancel or refuse registration of any of those products shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The secretary shall have all the powers that are granted pursuant to Chapter 5.

SEC. 10. Section 14611 of the Food and Agricultural Code is amended to read:

14611. (a) Any licensee whose name appears on the label who sells or distributes bulk fertilizing materials, as defined in Sections 14517 and 14533, to unlicensed purchasers, shall pay to the secretary an assessment not to exceed two mills (\$0.002) per dollar of sales for all fertilizing materials.

Any licensee whose name appears on the label of packaged fertilizing materials, as defined in Sections 14533 and 14551, shall pay to the secretary an assessment not to exceed two mills (\$0.002) per dollar of sales. The secretary may, based on the findings and recommendations of the board, reduce the assessment rate to a lower rate that provides sufficient revenue to carry out this chapter.

(b) In addition to the assessment provided in subdivision (a), the secretary may impose an assessment in an amount not to exceed one mill (\$0.001) per dollar of sales for all sales of fertilizing materials, to provide funding for research and education regarding the use and handling of fertilizing material, including, but not limited to, any environmental effects.

SEC. 11. Section 14623 of the Food and Agricultural Code is amended to read:

14623. The tonnage report shall be submitted to the secretary semiannually not later than January 31 and July 31 of each year. The secretary shall impose a penalty in the amount of two hundred dollars (\$200) on any person who does not submit the report on or before those dates. Any tonnage report that is more than 90 days past due is a cause for revocation of the license.

SEC. 12. Section 14631 of the Food and Agricultural Code is amended to read:

14631. Every lot, parcel, or package of fertilizing material distributed into or within this state shall have attached to it, or the shipment shall be physically accompanied by, a label as required by the secretary, by regulation. The secretary may require proof of labeling statements and claims made for any fertilizing material. As evidence of proof, the secretary may rely on experimental data, evaluations, or advice furnished by scientists, including scientists affiliated with the University of California, and may accept or reject additional sources of proof. The secretary shall cancel the approval of, or refuse to approve, a fertilizing material label if the secretary determines that adequate proof of label claims does not exist. The secretary, after hearing, may cancel the license of any person who distributes a fertilizing material with a label for which approval has been canceled or a label that has not been approved by the secretary.

SEC. 13. Section 14632 of the Food and Agricultural Code is repealed.

SEC. 14. Section 14641 of the Food and Agricultural Code is amended to read:

14641. The secretary shall have free access at reasonable times to all records, premises, production processes, or conveyances that are used in the manufacture, transportation, importation, distribution, storage, or application of any fertilizing material.

SEC. 15. Section 14642 of the Food and Agricultural Code is amended to read:

14642. The secretary shall, at the times and to the extent necessary for the enforcement of this chapter, do all of the following:

- (a) Take samples of any substance.
- (b) Make analyses or examinations of any substance.

(c) Conduct investigations concerning the use, sale, adulteration, or misbranding of any substance.

(d) Inspect the fertilizing material manufacturing facilities and take samples at various stages of production to verify label and labeling claims and production processes.

SEC. 16. Section 14651 of the Food and Agricultural Code is amended to read:

14651. (a) Unless otherwise specified in this chapter, any violation of this chapter, or the regulations adopted pursuant to this chapter, is a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000) for the first violation and not less than one thousand dollars (\$1,000) for each subsequent violation.

(b) The secretary may, after hearing, refuse to issue or renew, or may suspend or revoke, a license or registration for any violation of this chapter or any regulation that is adopted pursuant to this chapter.

(c) Upon calling a hearing, the secretary shall hand deliver or mail a notice of the hearing to the licensee or registrant specifying the time and place of the hearing at least 10 days prior to the hearing. The hearing officer may do any of the following:

(1) Administer oaths and take testimony.

(2) Issue subpoenas requiring the attendance of the licensee, registrant, or witnesses, together with books, records, memorandums, papers, and all other documents that may be pertinent to the case.

(3) Compel from the licensee or registrant and any witness the disclosure of all facts known to him or her regarding the case. In no instance shall any employee of Feed, Fertilizer, Livestock Drugs and Egg Regulatory Services serve as the hearing officer in any hearing conducted pursuant to this section.

(d) Any person who is denied a license, whose license is not renewed, or whose license is suspended or revoked pursuant to this section may appeal to the secretary.

SEC. 17. Section 14651.5 is added to the Food and Agricultural Code, to read:

14651.5. (a) The department shall levy a civil penalty against any person who violates this chapter in an amount of not more than five thousand dollars (\$5,000) for each violation. The amount of the penalty assessed for each violation shall be based upon the nature of the violation, the seriousness of the effect of the violation upon the effectuation of the purposes and provisions of this chapter, and the impact of the penalty on the violator, including the deterrent effect on future violations.

(b) Upon a finding that the violation is minor or unintentional, in lieu of a civil penalty, the secretary may issue a notice of warning.

(c) A person against whom a civil penalty is levied shall be afforded an opportunity for a hearing before the secretary, upon a request made within 30 days after the date of issuance of the notice of penalty. At the hearing, the person shall be given the right to present evidence on his or her own behalf. If no hearing is requested, the civil penalty shall constitute a final and nonreviewable order.

(d) If a hearing is held, review of the decision of the secretary may be sought by the person against whom the civil penalty is levied within 30 days of the date of the final order of the secretary pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) A civil penalty levied by the department pursuant to this section may be recovered in a civil action brought in the name of the state.

SEC. 18. Section 14652 of the Food and Agricultural Code is amended to read:

14652. (a) It is unlawful for any person to manufacture or distribute in this state any fertilizing material without complying with this chapter or the regulations adopted pursuant to this chapter.

(b) It is unlawful for any person to adulterate, misbrand, or alter any fertilizing material with the result that the fertilizing material would be inconsistent with the label claims. Any violation of this subdivision is a misdemeanor punishable by a fine as follows:

(1) Not more than five thousand dollars (\$5,000) for the first violation that is not a knowing violation.

(2) Not more than fifteen thousand dollars (\$15,000) for each subsequent unknowing violation.

(3) Not less than fifteen thousand dollars (\$15,000) for each knowing violation.

(c) Any person found in violation of subdivision (b) of this section or subdivision (e) of Section 14682 may also be prohibited by the secretary from obtaining a license to sell organic input materials for three years.

SEC. 19. Section 14655 of the Food and Agricultural Code is amended to read:

14655. (a) Any lot of fertilizing material for which a hold order or notice is issued shall be held by the person having control of the material and shall not be distributed or moved except under the specific directions of the secretary, pending final disposition pursuant to this chapter. This does not prevent the person who has control of the material from inspecting any seized material or from taking a reasonable sample for evidence while in the presence of a person designated by the secretary.

(b) The movement, distribution, or sale of all or part of any product by the person having control of the material that has been quarantined by the secretary, unless the movement, distribution, or sale has the prior approval of the secretary, is a violation subject to a civil penalty as specified in Section 14651.5, or a misdemeanor punishable by a fine of not more than five thousand dollars (\$5,000). A second or subsequent violation of this subdivision is a misdemeanor punishable by a fine of not less than ten thousand dollars (\$10,000).

SEC. 20. Section 14661 is added to the Food and Agricultural Code, to read:

14661. (a) The department shall be entitled to receive reimbursement from any person who is found in violation of this chapter for any reasonable attorney's fees and other related costs, including, but not limited to, investigative costs, involved in enforcement of this chapter.

(b) The department shall use all funds received pursuant to this chapter for the purposes of this chapter.

SEC. 21. Section 14681 of the Food and Agricultural Code is amended to read:

14681. No person shall distribute misbranded fertilizing materials. A fertilizing material shall be deemed to be misbranded under any of the following conditions:

- (a) If its labeling is false or misleading in any particular way.
- (b) If it is distributed under the name of another fertilizing material.
- (c) If it is not labeled as required by regulations adopted pursuant to this chapter.

(d) If it purports to be, or is represented as, a fertilizing material, or is represented as containing a primary or secondary plant nutrient or micronutrients, or both, unless the plant nutrients conform to the definition of identity, if any, prescribed by regulation. In adopting these regulations, due regard shall be given to commonly accepted definitions and official fertilizer terms such as those prescribed by the Association of American Plant Food Control Officials.

SEC. 22. Section 14682 of the Food and Agricultural Code is amended to read:

14682. No person shall distribute an adulterated fertilizing material. A fertilizing material shall be deemed to be adulterated under any of the following conditions:

- (a) If it contains any deleterious or harmful ingredient in sufficient amounts to render it injurious to beneficial plant life when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use that may be necessary to protect plant life are not indicated on the label.
- (b) If its composition falls below or differs from that which it is purported to possess by its labeling.
- (c) If it contains unwanted crop seed or weed seed.
- (d) If it is a threat to public safety.
- (e) If an organic input material contains ingredients that, in type or amount, do not comply with the requirements of the National Organic Program standards, as specified in Part 205 (commencing with Section 205.1) of Subchapter M of Chapter I of Subtitle B of Title 7 of the Code of Federal Regulations.

SEC. 23. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.